

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

PHARMACIA CORPORATION	)	
N/K/A PFIZER INC.,	)	
	)	
Plaintiff,	)	C.A. No. 2:18-cv-00510-ES-MAH
	)	
v.	)	
	)	
TWIN CITY FIRE	)	
INSURANCE COMPANY,	)	
	)	
Defendant.	)	
	)	

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**NOTICE OF FILING SUPPLEMENTAL EVIDENCE IN SUPPORT OF DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

Defendant Twin City Fire Insurance Company (“Twin City”) respectfully submits this Notice to supplement the evidence supporting Twin City’s Motion for Summary Judgment and Memorandum of Law (Dkt. #88) and Response in Opposition to Plaintiff’s Motion for Summary Judgment (Dkt. #99).

Twin City is filing under seal with this Notice Exhibit 50, which is the confidential settlement agreement dated December 1, 2019 between Plaintiff Pharmacia Corporation n/k/a Pfizer Inc. (“Pfizer”) and former defendant Arch Specialty Insurance Company (“Arch”). Pfizer produced the settlement agreement to Twin City confidentially, consistent with this Court’s prior discovery order (Dkt. #67 & #74), while reserving its objection to the Court’s discovery ruling relating to Pfizer’s settlements with other insurers. Because Pfizer and Arch settled months after the close of briefing in this case, the Arch settlement was not available to Twin City when its prior briefs were filed. Furthermore, Twin City advised the Court at the March 11, 2020 status conference preceding the parties’ unsuccessful mediation that, if the matter did not settle, then Twin City would make a short supplemental filing regarding the Pfizer/Arch settlement.

The settlement terms between Pfizer and Arch reflected in Exhibit 50 are similar to those appearing in other settlement agreements cited in Twin City's Motion. *Compare* Ex. 50, at PFIGARB040706, with Dkt. #88-01, at ¶¶111, 114, 115, 117, 118. As such, the Arch settlement agreement is additional evidence in support of Twin City's request for final summary judgment based on the unambiguous condition precedent to coverage under Twin City's excess policy that the underlying insurers "shall have duly admitted liability and shall have paid the full amount of their respective liability." *See* Dkt. #88, at pp.33-35; Dkt. #99, at pp.32-33.

Twin City also is filing with this Notice Exhibit 51, which is the stipulation of dismissal for a separate action between Pfizer and Arch relating to a matter discussed in the parties' summary judgment briefing, *Pfizer Inc. v. Arch Ins. Co.*, CVN18C01310PRWCCLD, 2019 WL 3306043 (Del. Super. Ct. July 23, 2019) (the "Morabito Coverage Action"). As Exhibit 51 reflects, Arch and Pfizer settled the Morabito Coverage Action in December 2019, when Arch and Pfizer also settled this action. Arch and Pfizer agreed to settlement terms in this action and the Morabito Coverage Action allowing Pfizer to show ostensibly "full payment" under the excess policy at issue in this case (where dispositive motions were pending) while discounting the value of Pfizer's claim in the Morabito Coverage Action, in which Arch had lost a significant threshold coverage issue (see 2019 WL 3306043, at \*7). But, the unequivocal "admit liability" condition in Twin City's policy protects Twin City from such machinations, and ensures true, full exhaustion of underlying coverage, by requiring Pfizer to show *both*: (1) full payment of the underlying limits, and (2) an admission of liability from the underlying insurers. Because Arch, like the other settling insurers before it, did not admit liability when it purportedly paid full limits to Pfizer to resolve the coverage issue in this matter, Pfizer cannot meet its burden to show exhaustion of the underlying insurance policies as a matter of undisputed fact and law.

Dated: August 13, 2020

Respectfully submitted,

**CLYDE & CO US LLP**

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**FILED UNDER SEAL**

**EXHIBIT 1**

# EXHIBIT 2

EFiled: Dec 23 2019 10:38AM EST  
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Case No. N18C-01-310 PRW CCLD



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

PFIZER INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. N18C-01-310 PRW [CCLD]
v.	)	
	)	TRIAL BY JURY OF
ARCH INSURANCE COMPANY,	)	TWELVE DEMANDED
and U.S. SPECIALTY INSURANCE	)	
COMPANY,	)	
	)	
Defendants.	)	

**JOINT STIPULATION OF PARTIAL DISMISSAL WITH PREJUDICE**  
**AND [PROPOSED] ORDER**

Pfizer, Inc. ("Pfizer") and Arch Insurance Company ("Arch"), acting through their undersigned counsel, and pursuant to Rule 41(a)(1) hereby stipulate, in consideration of a negotiated settlement executed by them, to the Dismissal with Prejudice of this action as it pertains to Arch, including all claims and counterclaims stated herein against and between Pfizer and Arch. Pfizer and Arch will each bear their own attorney's fees and costs, neither party will seek prejudgment or post-judgment interest, and Pfizer and Arch waive any rights to appeal.

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IT IS SO ORDERED this \_\_\_\_ day of December, 2019.

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The Honorable Paul R. Wallace